

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #11	CCRB Case #: 201605012	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/01/2016 3:04 PM	Location of Incident: Richmond Terrace and Lafayette Avenue	Precinct: 120	18 Mo. SOL 12/1/2017	EO SOL 12/1/2017	
Date/Time CV Reported Wed, 06/01/2016 6:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/09/2016 1:15 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT James Wilson	4677	942713	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Victor Rodrigues	00673	952172	SRG 5
2. POM Craig Lupardo	07830	950790	SRG 5
3. POM Neftaliz Moya	17516	958957	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used a chokehold against § 87(2)(b)	
B. Officers	Force: Officers restricted § 87(2)(b)'s breathing.	
C. SGT James Wilson	Force: Sergeant James Wilson used physical force against § 87(2)(b)	
D. Officers	Force: Officers used physical force against § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	

Case Summary

On June 1, 2016, Captain Andrew Hillery of Strategic Response Group Five called the Internal Affairs Bureau (IAB) Command Center and reported that a prisoner, § 87(2)(b) sustained a broken left arm while resisting arrest (IAB original log 16-19540). The case was received at the Civilian Complaint Review Board (CCRB) on June 9, 2016. There is no video footage of this incident.

On June 1, 2016, at approximately 3:04 p.m., § 87(2)(b) urinated outside in a patch of grass near the intersection of Richmond Terrace and Lafayette Avenue in Staten Island. § 87(2)(b) was approached by two officers from Strategic Response Group Five, PO Victor Rodrigues and PO Craig Lupardo, and two officers from the 120th Precinct, Sgt. James Wilson and PO Neftaliz Moya. § 87(2)(b) was repositioned to a seated position on the ground.

§ 87(2)(b) alleged that unknown officers then placed their hands on his neck and pushed his head against the pavement, causing his breathing to become restricted (**Allegations A and B**). § 87(2)(b) alleged that while lying chest-down on the pavement, Sgt. Wilson pulled his left arm, causing it to break (**Allegation C**). § 87(2)(b) further alleged that unknown officers stepped on his foot and hit him (**Allegations D and E**). § 87(2)(b) was eventually rear handcuffed and transported via ambulance to § 87(2)(b).

§ 87(2)(b) was arrested as a result of the incident, and he was charged with § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] (Board Review 01). Two arrest reports were generated in regards, § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of October 27, 2016, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 04).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 05).
- Sgt. Wilson has been a member-of-service for 10 years, and he has been the subject of three previous CCRB allegations, § 87(2)(g), and one of which was substantiated. In CCRB 201304015, the Board recommended that Sgt. Wilson be served with charges for a 'premises searched' allegation, but the NYPD disposition remains unknown.

Potential Issues

§ 87(2)(b) has developmental disabilities and a history of paranoid schizophrenia (Board Review 06). During his interview with the CCRB, § 87(2)(b) (Board Review 07) was unresponsive to material questions.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that approximately 6 to 12 officers initially approached him and were involved in his apprehension. The Event documentation (Board Review 08) indicates that only one unit, Strategic Response Group Five, was present. Every officer interviewed—Sgt. Wilson (Board Review 09), PO Moya (Board Review 10), PO Rodrigues (Board Review 11), and PO Lupardo (Board Review 12)—indicated that these four officers were the sole officers who approached and apprehended § 87(2)(b).

§ 87(2)(b) alleged that his head was forced against the pavement and a hand was pressed against his throat, restricting his breathing for approximately 20 minutes. When § 87(2)(b) was asked to describe the officer or officers who did this, he first said it was the officer who was nice to him. Then § 87(2)(b) described a white male officer who was 6'2" tall and approximately 26 years old. When § 87(2)(b) was asked if this was the officer who caused his restricted breathing, § 87(2)(b) responded, "The other cops, too." When asked which other officers, § 87(2)(b) solely responded, "The tall one."

No officer interviewed acknowledged making contact with § 87(2)(b)'s throat, or seeing any officer do so. A witness, § 87(2)(b) (Board Review 13), who alleged that § 87(2)(b) exposed his genitals to her immediately before he was stopped by police, indicated that no officer made contact with § 87(2)(b)'s neck. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) further alleged that an officer stepped on his foot, and that other officers hit him. § 87(2)(b) was unresponsive to follow-up questions regarding these allegations. No officer interviewed acknowledged stepping on § 87(2)(b)'s foot or hitting him, nor did any officer interviewed testify that they observed any officer do these things. § 87(2)(b) denied that any officer stepped on § 87(2)(b)'s foot or hit him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation not pleaded

§ 87(2)(g)

§ 87(2)(b)

Allegation A – Force: Officers used a chokehold against § 87(2)(b)

Allegation B – Force: Officers restricted § 87(2)(b)'s breathing.

Allegation D – Force: Officers used physical force against § 87(2)(b)

Allegation E – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Sergeant James Wilson used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was approached by four officers who each intended to arrest him. Sgt. Wilson and PO Moya testified that they intended to arrest § 87(2)(b) in regards to a complaint of criminal trespassing, and PO Rodrigues and PO Lupardo testified that intended to arrest § 87(2)(b). It is further undisputed that § 87(2)(b) ran when he was approached, and that he was brought to the ground.

§ 87(2)(b) alleged that prior to being secured in handcuffs, Sgt. Wilson pulled his left arm with force, causing it to break. This was corroborated by PO Lupardo, PO Moya, and PO Rodrigues. However, Sgt. Wilson testified that while solely holding onto § 87(2)(b)'s left arm, § 87(2)(b) twisted his own body away from Sgt. Wilson, and Sgt. Wilson then heard a “pop” sound. Each officer interviewed acknowledged hearing the “pop” sound and indicated that solely Sgt. Wilson was making contact with § 87(2)(b)'s left arm when this occurred. Each officer further indicated that § 87(2)(b) resisted arrest by tucking his arms underneath his torso and kicking his legs. PO Moya and PO Rodrigues also said that § 87(2)(b) flailed his arms around as well.

§ 87(2)(b)'s medical records indicate that his left arm was broken (Board Review 06).

§ 87(2)(g)

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Squad: 11

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date